

Queensland



**LOCAL GOVERNMENT  
LEGISLATION  
AMENDMENT ACT (No. 3)  
1997**

**Act No. 76 of 1997**



# Queensland



## LOCAL GOVERNMENT LEGISLATION AMENDMENT ACT (No. 3) 1997

### TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title .....	6
<b>PART 2—AMENDMENT OF CITY OF BRISBANE ACT 1924</b>		
2	Act amended in pt 2 .....	6
3	Amendment of s 3 (Interpretation) .....	6
4	Amendment of s 3A (Application of the Local Government Act) .....	6
5	Amendment of s 47 (What land is rateable?) .....	7
6	Insertion of new s 47A .....	7
	47A Effect of resolution under s 47(1)(d) .....	7
7	Amendment of s 119 (Annual Report) .....	7
<b>PART 3—AMENDMENT OF LOCAL GOVERNMENT ACT 1993</b>		
8	Act amended in pt 3 and schedule .....	8
9	Amendment of s 8 (Meaning of “open to inspection”) .....	8
10	Amendment of s 9 (Act applies only so far as expressly provided) .....	8
11	Insertion of new ch 7D .....	8
<b>CHAPTER 7D—COMPLAINTS ABOUT COMPETITIVE NEUTRALITY</b>		
<b>PART 1—PRELIMINARY</b>		
	458O Object of ch 7D .....	9
	458OA Application of ch 7D .....	9
	458OB Application to Brisbane City Council .....	10
	458OC Definitions for ch 7D .....	10
<b>PART 2—COMPLAINT PROCESS FOR LOCAL GOVERNMENT BUSINESS ENTITIES</b>		

*Division 1—Preliminary*

458OD Application of pt 2 .....	13
458OE Affected persons .....	13

*Division 2—Complaints about competitive neutrality*

458OF Local government to establish complaint process .....	14
458OG Requirements for complaint process .....	14
458OH Grounds for complaints .....	15
458OI Effect of complaint on activities .....	15
458OJ Referee to act fairly .....	15
458OK Matters to be considered by referee on complaint .....	16

*Division 3—Investigation of complaints*

458OL Requirement of referee to investigate .....	17
458OM Investigation notice .....	18
458ON Effect of giving an investigation notice .....	19
458OO General procedures .....	19
458OP Consideration of submissions .....	19
458OQ Handling of documents .....	20
458OR Confidential information .....	20

*Division 4—Reports on complaints*

458OS Giving of reports .....	21
458OT Contents of reports .....	21
458OU Reports open to inspection .....	22
458OV Local government decisions on recommendations .....	22

*Division 5—General provisions about complaints process*

458OW Disposal of documents held by referee .....	23
458OX Protection from liability of referee or person assisting referee . . . .	23
458OY Protection from liability of person giving information to referee . .	23
458OZ Secrecy .....	23
458OZA Draft reports .....	24

*Division 6—Provisions for Queensland Competition Authority as referee*

458OZB Local government may resolve Queensland Competition Authority to be referee . . . . .	24
458OZC Application of complaints process . . . . .	25
458OZD Making a complaint . . . . .	25
458OZE Further information to support complaint . . . . .	26
458OZF Application of part and Queensland Competition Authority Act 1997 . . . . .	26
458OZG Local government decisions on recommendations . . . . .	27

PART 3—REFERENCES TO QUEENSLAND COMPETITION  
AUTHORITY*Division 1—Application of part*

458P Application of pt 3 . . . . .	28
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*Division 2—Institution of reference*

458PA Reference of outcome of complaint to Queensland Competition . . .	28
458PB Making a reference . . . . .	29
458PC Request for referee's documents . . . . .	30
458PD Further information to support reference . . . . .	30
458PE Matters to be considered by Queensland Competition Authority in .	30
458PF Procedures for dealing with references . . . . .	31

*Division 3—Reports of Queensland Competition Authority about  
references*

458PG Giving of reports . . . . .	32
458PH Contents of reports . . . . .	32
458PI Reports open to inspection . . . . .	33
458PJ Local government decisions about reports . . . . .	33

## PART 4—ACCREDITATION

458Q Application of pt 4 . . . . .	34
458QA Purpose of accreditation . . . . .	34
458QB Application for accreditation . . . . .	34
458QC Investigation notice . . . . .	35
458QD Matters to be considered by authority for investigation . . . . .	35

	458QE Procedures for investigations .....	36
	458QF Decision on application .....	37
	458QG Conditions on grant of accreditation .....	38
	458QH Notice of decision .....	38
	458QI Publication of decision .....	39
	458QJ Period of effect of accreditation .....	39
	458QK Surrender of accreditation .....	39
	458QL Cancellation of accreditation .....	40
	458QM Lists of accreditations .....	41
	<b>PART 5—MISCELLANEOUS</b>	
	458R Register of accreditations, complaints etc. ....	41
	<del>458RA Annual report to include summary of complaints and decisions by.</del> 42	
12	Amendment of s 697 (Local laws about dogs) .....	42
	<b>PART 4—AMENDMENT OF LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT 1978</b>	
13	Act amended .....	42
14	Amendment of s 109 (Expiry of part) .....	43
	<b>PART 5—AMENDMENT OF LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT 1990</b>	
15	Act amended in pt 5 .....	43
16	Insertion of new s 8.12 .....	43
	8.12 Special provisions relating to Danpork Australia Pty Ltd .....	43
	<b>SCHEDULE</b> .....	
		44
	<b>MINOR AMENDMENTS OF LOCAL GOVERNMENT ACT 1993</b>	

Queensland



**Local Government Legislation Amendment  
Act (No. 3) 1997**

**Act No. 76 of 1997**

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**An Act to amend legislation about local government**

*[Assented to 1 December 1997]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Local Government Legislation Amendment Act (No. 3) 1997*.

## **PART 2—AMENDMENT OF CITY OF BRISBANE ACT 1924**

### **Act amended in pt 2**

2. This part amends the *City of Brisbane Act 1924*.

### **Amendment of s 3 (Interpretation)**

3. Section 3(3), ‘to 7C’—

*omit, insert—*

‘to 7D’.

### **Amendment of s 3A (Application of the Local Government Act)**

4. Section 3A(2), after ‘• chapter 7C (Reform of certain water and sewerage services)’—

*insert—*

• chapter 7D (Complaints about competitive neutrality)?.



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**Amendment of s 47 (What land is rateable?)****5. Section 47—**

*insert—*

‘(4) Land may be exempted from rating under subsection (1)(c) despite it being land used for a purpose mentioned in subsection (1)(d) or land to which a resolution under subsection (1)(d) applies.’.

**Insertion of new s 47A****6. After section 47—**

*insert—*

**‘Effect of resolution under s 47(1)(d)**

‘**47A.(1)** This section applies to a resolution under section 47(1)(d) made by the council for any land after the commencement of this section.

‘(2) Also, this section applies despite the terms of the resolution.

‘(3) The resolution exempts the land from all general rates, differential general rates, minimum general rate levies and separate rates and charges.’.

**Amendment of s 119 (Annual Report)****7. Section 119(3)—**

*insert—*

‘(eb)particulars required to be included under the *Local Government Act 1993*, section 458RA;<sup>1</sup> and’.

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<sup>1</sup> Section 458RA (Annual Report to include summary of complaints and decisions by local government)

## **PART 3—AMENDMENT OF LOCAL GOVERNMENT ACT 1993**

### **Act amended in pt 3 and schedule**

**8.** This part and the schedule amend the *Local Government Act 1993*.

### **Amendment of s 8 (Meaning of “open to inspection”)**

**9.** Section 8(1), paragraph (aa), ‘or 7C’—

*omit, insert—*

‘, 7C or 7D’.

### **Amendment of s 9 (Act applies only so far as expressly provided)**

**10.** Section 9(2), after ‘• chapter 7C (Reform of certain water and sewerage services)’—

*insert—*

‘• chapter 7D (Complaints about competitive neutrality)’.

### **Insertion of new ch 7D**

**11.** After section 458NQ—

*insert—*

## **‘CHAPTER 7D—COMPLAINTS ABOUT COMPETITIVE NEUTRALITY**

### **‘PART 1—PRELIMINARY**

#### **‘Object of ch 7D**

**‘458O.** The object of this chapter is to provide for—

- (a) the establishment by local governments of appropriate processes for dealing with complaints about the carrying on by local government business entities of activities in a way that does not comply with the competitive neutrality principles applying to the activities; and
- (b) decisions by local governments on recommendations by referees under the complaint processes; and
- (c) references to the Queensland Competition Authority about the outcomes of certain complaints; and
- (d) investigations and recommendations by the authority on references to it; and
- (e) decisions by local governments on recommendations by the authority in relation to references; and
- (f) accreditation by the authority of activities carried on by local government business entities applying competitive neutrality principles.

#### **‘Application of ch 7D**

**‘458OA.** Subject to sections 458OD, 458P and 458Q and part 2, division 6, this chapter applies in relation to an activity carried on by a local government business entity if it—

- 
- (a) is a corporatised corporation;<sup>2</sup> or
  - (b) implements—
    - (i) full cost pricing under chapter 7A, part 4; or
    - (ii) commercialisation under chapter 7A, part 5; or
    - (iii) the code of competitive conduct under chapter 7B.<sup>3</sup>

### **‘Application to Brisbane City Council**

**‘458OB.** This chapter applies to the Brisbane City Council.

### **‘Definitions for ch 7D**

**‘458OC.** In this chapter—

**“affected person”** see section 458OE.

**“applicant”** means—

- (a) for parts 2 and 3—an affected person who makes a complaint under a local government’s complaint process; and
- (b) for part 4—a local government business entity that makes application for accreditation under the part for an activity carried on by the entity.

**“competitive advantage”** means an advantage that, solely because of local government ownership, is—

- (a) a financial advantage; or
- (b) a regulatory advantage; or
- (c) a procedural advantage; or
- (d) another advantage.

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<sup>2</sup> “Corporatised corporation” is defined in section 458OC (Definitions for ch 7D).

<sup>3</sup> Chapter 7A (National competition reform of significant business activities), part 4 (Full cost pricing for significant business activities) or part 5 (Commercialisation of significant business activities), or chapter 7B (Conduct of competitive business activities)

*Example of financial advantage—*

An advantage enjoyed by a local government business entity carrying on an activity because of the entity being exempt from a local government charge that applies to a person making a complaint.

*Example of regulatory advantage—*

An advantage enjoyed by a local government business entity carrying on an activity because of the entity being exempt from an approval procedure that applies to a person making a complaint.

*Example of procedural advantage—*

An advantage enjoyed by a local government business entity carrying on an activity because of the entity not being obliged to supply the same level of information in local government procedures as a person making a complaint.

**“competitive neutrality principles” means—**

- (a) for an activity of a local government business entity to which full cost pricing under chapter 7A, part 4 applies—the principles and requirements (other than reporting requirements) of full cost pricing under the part; or
- (b) for an activity of a commercial business unit under chapter 7A, part 5—the following principles and requirements under part 5—
  - (i) the principles and requirements of full cost pricing (other than reporting requirements);
  - (ii) the requirements for treatment of community service obligations;
  - (iii) the requirements for removal, or taking account, of advantages and disadvantages accruing to a commercial business unit because it is a part of the local government; or
- (c) for an activity of a corporatised corporation—the following principles and requirements of corporatisation under chapter 7A, part 6—
  - (i) the requirements for treatment of community service obligations;
  - (ii) the requirements for the removal of advantages and disadvantages accruing to the corporatised corporation as a result of local government ownership; or

- (d) for an activity of a local government business entity to which the code of competitive conduct under chapter 7B applies or is required to be applied—the requirements (other than reporting requirements) of the code.<sup>4</sup>

**“complaint”** means a complaint under a complaint process.

**“complaint process”**, for an activity of a local government business entity, means the complaint process established by the local government for dealing with complaints about the failure of the entity to carry on the activity in compliance with competitive neutrality principles applying to the activity.

**“corporatised corporation”** means a corporatised corporation under chapter 7A, part 6.<sup>5</sup>

**“investigation notice”** means—

- (a) for part 2—a notice given under section 458OM;
- (b) for part 3—a notice given under section 458OM as applied to the part by section 458PF;
- (c) for part 4—a notice given under section 458QC.

**“local government business entity”** means—

- (a) a local government to the extent it carries on an activity to which this chapter applies, including a commercial business unit of a local government; or
- (b) a corporatised corporation.

**“Queensland Competition Authority”** means the Queensland Competition Authority under the *Queensland Competition Authority*

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<sup>4</sup> Chapter 7A (National competition reform of significant business activities), part 4 (Full cost pricing for significant business activities) or part 5 (Commercialisation of significant business activities) or part 6 (Local government owned corporations) or chapter 7B (Conduct of competitive business activities). The *Local Government Finance Standard 1994* deals with the application of competitive neutrality principles and contains the code of competitive conduct for local governments to which the standard applies.

<sup>5</sup> Part 7A (National competition reform of significant business activities), part 6 (Local government owned corporations)

*Act 1997.*

“**referee**” means a person appointed by a local government to investigate a complaint.

“**reference**” means a reference to the Queensland Competition Authority under part 3.

## **PART 2—COMPLAINT PROCESS FOR LOCAL GOVERNMENT BUSINESS ENTITIES**

### *Division 1—Preliminary*

#### **‘Application of pt 2**

**‘458OD.** This part does not apply to an activity carried on by a local government business entity to the extent that, and for so long as, there is a current accreditation for the activity by the Queensland Competition Authority granted to the entity under part 4.

#### **‘Affected persons**

**‘458OE.(1)** In this part, an “**affected person**” is a person who—

- (a) is, or may be, adversely affected by the competitive advantage alleged by the person to be enjoyed by the local government business entity in carrying on an activity; and
- (b) in relation to the activity mentioned in paragraph (a)—satisfies a competition requirement.

**‘(2)** For subsection (1), a person satisfies a competition requirement in relation to an activity carried on by the entity if the person—

- (a) competes with the local government business entity in relation to the activity; or
- (b) seeks to compete with the local government business entity in

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relation to the activity but is being hindered from doing so by the competitive advantage alleged by the person to be enjoyed by the entity.

### ***Division 2—Complaints about competitive neutrality***

#### **Local government to establish complaint process**

**4580F.(1)** Each local government must establish a process for resolving complaints by affected persons about failures of its local government business entities to carry on activities in a way that complies with the competitive neutrality principles applying to the activities.

**(2)** The process must be adopted by resolution of the local government.<sup>6</sup>

#### **Requirements for complaint process**

**4580G.(1)** The complaint process must include the following elements—

- (a) the process for selecting and appointing referees to investigate complaints;
- (b) preliminary procedures before an affected person makes a complaint—
  - (i) for affected persons to raise concerns about alleged failures of local government business entities to comply with the competitive neutrality principles applying to the entities' activities; and
  - (ii) for clarifying and, if possible, resolving the concerns;
- (c) the way an affected person may make a complaint;
- (d) sending of complaints to, and their investigation by, the referee;

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<sup>6</sup> Under division 6, a local government may resolve that the Queensland Competition Authority be the referee for its complaint process for certain activities. The division contains provisions about the application of this part, and certain provisions of the *Queensland Competition Authority Act 1997*, to the complaint process.



- (e) recording of all complaints and the referee's decisions and recommendations;
- (f) advice to the applicant of the complaint procedure;
- (g) giving the applicant an opportunity to give to the referee further details about the applicant's complaint;
- (h) times in which the referee must give reports to the local government;
- (i) any other matters the local government considers appropriate.

'(2) Also, the process mentioned in subsection (1)(a) must require that the person appointed to be a referee to investigate a complaint must not be involved with the carrying on of the activity the subject of the complaint.

'(3) The fee charged by a local government for making a complaint must not be more than the maximum fee prescribed under a regulation for making a complaint.

### **'Grounds for complaints**

'458OH. The grounds for a complaint must be the failure of a local government business entity to carry on an activity in a way that complies with the competitive neutrality principles applying to the activity.

### **'Effect of complaint on activities**

'458OI. A complaint about an activity of a local government business entity does not prevent the entity from continuing to carry on the activity pending a decision by the local government on the referee's report and recommendation on the complaint.

### **'Referee to act fairly**

'458OJ. In investigating a complaint and making a report, the referee must act fairly and impartially.

**‘Matters to be considered by referee on complaint**

**‘458OK.(1)** In investigating a complaint, the referee must have regard to the following matters—

- (a) the need to ensure compliance with the relevant competitive neutrality principles;
- (b) the need for efficient resource allocation;
- (c) the need to promote competition;
- (d) any local government policies affecting the application of competitive neutrality principles, including—
  - (i) any directions about the application of competitive neutrality principles given to the local government business entity by the local government; and
  - (ii) any arrangements between the local government and the local government business entity about a competitive advantage gained or competitive disadvantage suffered by the entity because of the local government ownership of the entity; and
  - (iii) social welfare and equity considerations including community service obligations and the availability of goods and services to consumers; and
  - (iv) policies on economic and regional development issues, including employment and investment growth;
- (e) any law or local government policies relating to ecologically sustainable development;
- (f) any law or local government policies relating to occupational health and safety or industrial relations.

**‘(2)** In investigating a complaint, the referee may also have regard to the interests of consumers or any class of consumers.

**‘(3)** However, in deciding whether a complaint has been substantiated, the referee must not accept that any competitive advantage enjoyed by the local government business entity solely because of local government ownership of the entity is justified because of the existence of a competitive

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disadvantage suffered by the entity because of the local government ownership of the entity.

‘(4) Subsections (1) and (2) do not limit the matters the referee may have regard to in investigating a complaint.

### *‘Division 3—Investigation of complaints*

#### **‘Requirement of referee to investigate**

‘458OL.(1) The referee must investigate a complaint unless—

- (a) the referee reasonably believes the applicant is not, or could not be, in competition with the local government business entity carrying on the activity; or
- (b) the referee reasonably believes the applicant is not, or is unlikely to be, adversely affected by the failure alleged in the complaint of the local government business entity to carry on the activity in a way that complies with the competitive neutrality principles applying to the activity; or
- (c) the referee reasonably believes the applicant has not shown the applicant has made a genuine attempt to resolve the subject matter of the complaint through the preliminary procedure of the complaint process mentioned in section 458OG(1)(b);<sup>7</sup> or
- (d) the applicant has failed, without reasonable excuse, to give relevant information asked for by the referee within the reasonable time stated by the referee; or
- (e) the local government business entity carrying on the activity has a current accreditation for the activity granted by the Queensland Competition Authority under part 4; or
- (f) the referee reasonably believes the complaint is frivolous or vexatious.

‘(2) In forming a belief for subsection (1)(a), the referee must have

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<sup>7</sup> Section 458OG (Requirements for complaint process)

regard to the following—

- (a) laws governing competition applicable to the activities of the local government business entity;
- (b) whether the applicant is supplying, or could supply, goods or services similar to the goods or services the subject of the activity carried on by the local government business entity;
- (c) any other matter the referee considers appropriate.

‘(3) If the referee decides not to investigate a complaint, the referee must, within 14 days after making the decision, give a written notice stating the decision and the reasons for the decision to—

- (a) the applicant; and
- (b) the local government.

### ‘Investigation notice

‘458OM.(1) Before starting an investigation under this division, the referee must give notice of the investigation.

‘(2) The notice must be given to—

- (a) the relevant local government; and
- (b) the applicant; and
- (c) if the local government business entity carrying on the activity is a corporatised corporation—the corporation; and
- (d) another person the referee considers appropriate.

‘(3) The notice must—

- (a) state the referee’s intention to conduct the investigation; and
- (b) state the subject matter of the complaint or be accompanied by a copy of the complaint; and
- (c) invite the person to whom the notice is given to make written, or, if the referee approves, oral, submissions to the referee on the subject matter within a reasonable time stated in the notice; and
- (d) state the referee’s address.

### **‘Effect of giving an investigation notice**

**‘458ON.** The referee must conduct the investigation and give a report under division 4 on the results of the investigation.

### **‘General procedures**

**‘458OO.(1)** In an investigation, the referee—

- (a) must act with as little formality as possible; and
- (b) is not bound by technicalities, legal forms or rules of evidence; and
- (c) may be informed on any matter relevant to the investigation in any way the referee considers appropriate; and
- (d) must comply with natural justice.

**‘(2)** For subsection (1)(c), the referee may consult with persons as the referee considers appropriate.

**‘(3)** The referee may—

- (a) require information or submissions to be presented in writing; and
- (b) decide the matters on which information or submissions may be presented orally.

### **‘Consideration of submissions**

**‘458OP.(1)** In an investigation, the referee must consider all submissions that—

- (a) are made in response to an investigation notice; and
- (b) are received by the referee in the time stated in the notice.

**‘(2)** Despite subsection (1), unless the referee, in an investigation notice, approved the making of oral submissions, the referee is required to consider a submission only if it is in writing.

**‘Handling of documents**

‘**458OQ.(1)** If a document is produced to the referee for an investigation, the referee may—

- (a) inspect the document; and
- (b) make copies of the document if it is relevant to the investigation.

‘**(2)** Also, the referee may take possession of the document, and keep it while it is necessary for the investigation.

‘**(3)** While keeping a document, the referee must allow a person otherwise entitled to possession of it to inspect or copy the document at a reasonable time and place the referee decides.

**‘Confidential information**

‘**458OR.(1)** This section applies if a person believes—

- (a) stated information made available, or to be made available, in an investigation is confidential; and
- (b) the disclosure of the information is likely to damage the person’s commercial activities.

‘**(2)** The person may—

- (a) inform the referee of the person’s belief; and
- (b) ask the referee not to disclose the information to another person.

‘**(3)** The referee must take all reasonable steps to ensure the information is not, without the person’s consent, disclosed to another person other than a person assisting the referee in carrying out the referee’s duties who receives the information in the course of carrying out the duties.

‘**(4)** As soon as practicable after giving a report under division 4 on the investigation, the referee must return any document containing confidential information to the person who produced it to the referee.

‘**(5)** In this section—

“**commercial activities**” means activities conducted on a commercial basis.

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***Division 4—Reports on complaints***

**‘Giving of reports**

**‘458OS.(1)** The referee must give a report (including recommendations) on the results of the referee’s investigation of a complaint about an activity of a local government business entity to—

- (a) the local government; and
- (b) if the entity is a corporatised corporation—the corporation.

**‘(2)** The referee also must give to other persons to whom an investigation notice has been given the following—

- (a) written notice of the giving of the report;
- (b) a copy of the recommendations in the report;
- (c) written notice that the report (including recommendations) is open to inspection at the local government’s public office.<sup>8</sup>

**‘Contents of reports**

**‘458OT.** The referee must, in a report—

- (a) state whether the referee considers the complaint has been substantiated; and
- (b) if the referee considers the complaint has been substantiated—include recommendations on how the local government business entity’s failure to carry on an activity in a way that complies with the competitive neutrality principles applying to the activity could be overcome; and
- (c) if the referee considers the local government business entity suffers a competitive disadvantage because of the local government ownership of the entity—
  - (i) include comments about the competitive disadvantage (including comments about the effect of the disadvantage on

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<sup>8</sup> Section 8 (Meaning of “open to inspection”)

- the local government business entity); and
- (ii) include recommendations on how the disadvantage suffered by the local government business entity could be overcome; and
- (d) state reasons for its recommendations.

### **‘Reports open to inspection**

**‘458OU.(1)** As soon as practicable after the local government receives the report, the local government must ensure a copy of it is open to inspection.

**‘(2)** For section 8, the report is a document of the local government.<sup>9</sup>

### **‘Local government decisions on recommendations**

**‘458OV.(1)** The local government must decide, by resolution, whether to implement the recommendations in the report.

**‘(2)** The resolution must include reasons for the decision.

**‘(3)** The local government must make the resolution—

- (a) within 1 month after the local government receives the report from the referee on a complaint; or
- (b) if the local government does not meet within the month—at the first meeting of the local government after the month.

**‘(4)** Within 7 days after making a decision, the local government must give written notice of the resolution to—

- (a) the applicant; and
- (b) if the local government business entity concerned is a corporatised corporation—the corporation.

**‘(5)** If the decision is to implement the recommendations and the local government business entity concerned is a corporatised corporation, the corporation must implement the recommendations as soon as practicable.

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<sup>9</sup> Section 8 (Meaning of “open to inspection”)



***‘Division 5—General provisions about complaints process***

**‘Disposal of documents held by referee**

**‘458OW.(1)** As soon as practicable after giving a report on a complaint, the referee must give to the chief executive officer of the local government any document not returned to a person under section 458OR.

**‘(2)** While the documents are kept by the chief executive officer, they are to be treated as the local government’s documents.

**‘Protection from liability of referee or person assisting referee**

**‘458OX.(1)** The referee, or person assisting the referee, is not civilly liable for an act done, or omission made, honestly and without negligence under this part.

**‘(2)** If subsection (1) prevents a civil liability attaching to the referee or other person, the liability attaches instead to the relevant local government.

**‘(3)** The protection from liability under this section applies only to a referee, or a person assisting the referee, who is an employee of the relevant local government.

**‘Protection from liability of person giving information to referee**

**‘458OY.** A person is not liable in any way for any loss, damage or injury suffered by another person because of the giving in good faith of information to the referee for this part.

**‘Secrecy**

**‘458OZ.(1)** A person to whom this section applies must not—

- (a) make a record of protected information; or
- (b) whether directly or indirectly, divulge or communicate to a person protected information about another person or a local government business entity.

Maximum penalty—1 000 penalty units or 1 year’s imprisonment.

‘(2) However, subsection (1) does not apply if—

- (a) the record is made, or the information is divulged or communicated—
  - (i) under this part; or
  - (ii) in the performance of duties, as a person to whom this section applies, under this part; or
  - (iii) with the consent of the person or entity to whom the protected information relates; or
- (b) the protected information is otherwise publicly available.

‘(3) In this section—

“**person to whom this section applies**” means a person who is, or has been, a referee or a person assisting a referee.

“**protected information**” means information that—

- (a) is about a person or local government business entity; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person’s duties under this part.

### ‘Draft reports

‘458OZA. In preparing a report under this Act, the referee may give a draft of the report to the persons the referee considers appropriate.

### *‘Division 6—Provisions for Queensland Competition Authority as referee*

### ‘Local government may resolve Queensland Competition Authority to be referee

‘458OZB.(1) A local government may resolve the Queensland Competition Authority is the referee for its complaint process for—

- (a) a significant business activity, under chapter 7A, carried on by a

local government business entity; or

(b) a roads business activity under chapter 7B.

‘(2) As soon as practicable after making the resolution, the local government must give written notice of the resolution to the authority.

‘(3) If the local government becomes aware a person proposes to make a complaint about the activity, the local government must—

(a) tell the person the complaint must be made to the authority; and

(b) give the person information to enable the person to make the complaint.

#### ‘Application of complaints process

‘458OZC. Section 458OG(1)(a), (c), (d), (f), (g), (h), and (i), (2) and (3) does not apply to the complaint process for the activity.

#### ‘Making a complaint

‘458OZD. A complaint must—

(a) be made in writing to the Queensland Competition Authority; and

(b) contain details of the alleged noncompliance by the local government business entity to carry on the activity in a way that complies with the competitive neutrality principles applying to the activity; and

(c) include sufficient details to show—

(i) how the applicant is, or may be, adversely affected by the alleged noncompliance; and

(ii) the applicant is, or could be, in competition with the local government business entity carrying on the activity; and

(iii) the applicant has made a genuine attempt to resolve the subject matter of the complaint through the preliminary

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procedure of the complaint process mentioned in section 458OG(1)(b).<sup>10</sup>

### **‘Further information to support complaint**

**‘458OZE.(1)** The Queensland Competition Authority may, by written notice given to an applicant, require the applicant to give the authority further information about the complaint within the reasonable time stated in the notice.

**‘(2)** A notice under subsection (1) must relate to information that is necessary and reasonable to help the authority decide whether or not to investigate the complaint.

### **‘Application of part and Queensland Competition Authority Act 1997**

**‘458OZF.(1)** Sections 458OO, 458OP, 458OQ, 458OR, 458OW, 458OX, 458OY, 458OZ and 458OZA do not apply to a complaint made in relation to the activity.<sup>11</sup>

**‘(2)** Also, the following provisions of the *Queensland Competition Authority Act 1997* (the “**provisions**”) apply, with all necessary changes and the changes prescribed in subsection (3), to a complaint made in relation to the activity—

- part 6 (Investigations by Authority)
- part 9 (Offences)
- section 236 (Responsibility for acts or omissions of representatives)
- section 237 (Protection from liability of member or employee)
- section 238 (Protection from liability of person giving information to authority)
- section 239 (Confidential information)

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<sup>10</sup> Section 458OG (Requirements for complaint process)

<sup>11</sup> Under section 458OZC, certain provisions in section 458OG do not apply if the Queensland Competition Authority is a referee.

- section 240 (Secrecy)
- section 241 (Draft reports)
- section 243 (Delegation).

‘(3) Unless a contrary intention appears, the provisions apply as if a reference in the provisions to—

- (a) a complaint were a reference to a complaint under this part; and
- (b) the complainant were a reference to the affected person who made the complaint under this part; and
- (c) a government agency were a reference to the local government business entity mentioned in the complaint; and
- (d) an investigation were a reference to an investigation under this part; and
- (e) the responsible Minister, or the Ministers, were a reference to the relevant local government.

### **‘Local government decisions on recommendations**

‘**458OZG.** Within 7 days after making a resolution under section 458OV,<sup>12</sup> the local government must give written notice to the Queensland Competition Authority of the resolution.

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<sup>12</sup> Under section 458OV the local government is required to give written notice of the resolution to the applicant and, if the local government business entity concerned is a corporatised corporation, the corporation.

## **‘PART 3—REFERENCES TO QUEENSLAND COMPETITION AUTHORITY**

### *‘Division 1—Application of part*

#### **‘Application of pt 3**

**‘458P.(1)** This part applies to—

- (a) a significant business activity, under chapter 7A, carried on by a local government business entity; and
- (b) a roads business activity, under chapter 7B.

**‘(2)** However, this part does not apply to—

- (a) a local government business entity applying the code of competitive conduct to a business activity under chapter 7B; or
- (b) an activity carried on by a local government business entity for which there is a current accreditation by the Queensland Competition Authority under part 4; or
- (c) an activity carried on by a local government business entity if the authority is the referee for a complaint for the activity.

### *‘Division 2—Institution of reference*

#### **‘Reference of outcome of complaint to Queensland Competition Authority**

**‘458PA.(1)** An applicant may, under this part, refer to the Queensland Competition Authority—

- (a) a referee’s decision not to investigate a complaint by the applicant; or
- (b) a local government’s decision on a recommendation by a referee in a report on a complaint by the applicant.

**‘(2)** The reference must be on 1 or more of the following grounds—

- (a) the complaint process for an activity of the local government business entity is not appropriate;
- (b) the referee's decision not to investigate a complaint is not in accordance with the relevant facts;
- (c) the referee's recommendation—
  - (i) is not in accordance with the relevant facts or the competitive neutrality principles; or
  - (ii) is deficient because the local government business entity did not give the referee relevant information about an activity requested by the referee;
- (d) the decision of the local government on the referee's recommendation is not in accordance with the competitive neutrality principles.

### **'Making a reference**

**'458PB.(1)** A reference must—

- (a) be in writing; and
- (b) contain details of the complaint; and
- (c) if the reference alleges the complaint process for an activity of the local government business entity is inappropriate—the reasons why the process is inappropriate.

**'(2)** Also, a reference must include sufficient details to show—

- (a) how the applicant is, or may be, adversely affected by—
  - (i) the alleged failure to comply with the competitive neutrality principles; or
  - (ii) the alleged inappropriateness of the process; and
- (b) the applicant and local government business entity are, or could be, in competition.

### **‘Request for referee’s documents**

**‘458PC.(1)** This section applies if the Queensland Competition Authority, by written notice given to the chief executive officer of a local government, asks for the documents received by the chief executive officer from the referee under section 458OW concerning the complaint referred to the authority.

**‘(2)** As soon as practicable after receiving the request, the chief executive officer must give the documents held under the section to the authority.

### **‘Further information to support reference**

**‘458PD.(1)** The Queensland Competition Authority may, by written notice given to an applicant, require the applicant to give the authority further information about the reference within the reasonable time stated in the notice.

**‘(2)** A notice under subsection (1) must relate to information that is necessary and reasonable to help the authority decide whether or not to deal with the reference.

### **‘Matters to be considered by Queensland Competition Authority in considering reference**

**‘458PE.(1)** In considering a reference on a ground mentioned in section 458PA(2)(b), (c) or (d), the Queensland Competition Authority—

- (a) must have regard to the matters stated in section 458OK(1) and (3);<sup>13</sup> and
- (b) may have regard to the interests of consumers or any class of consumers.

**‘(2)** Subsection (1) does not limit the matters the authority may have regard to in considering a reference.

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<sup>13</sup> Section 458OK (Matters to be considered by referee on complaint)



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### ‘Procedures for dealing with references

‘**458PF.(1)** Sections 458OI, 458OJ, 458OL, 458OM and 458ON apply, with all necessary changes, to the Queensland Competition Authority considering a reference as if a reference in the sections to—

- (a) a complaint were a reference to a reference under this part; and
- (b) the referee were a reference to the Queensland Competition Authority.

‘**(2)** Also, the following provisions of the *Queensland Competition Authority Act 1997* (the “**provisions**”) apply, with all necessary changes and the changes prescribed in subsection (3), to the consideration of a reference by the authority—

- part 6 (Investigations by authority)
- part 9 (Offences)
- section 236 (Responsibility for acts or omissions of representatives)
- section 237 (Protection from liability of member or employee)
- section 238 (Protection from liability of person giving information to authority)
- section 239 (Confidential information)
- section 240 (Secrecy)
- section 241 (Draft reports)
- section 243 (Delegation).

‘**(3)** Unless a contrary intention appears, the provisions apply as if a reference in the provisions to—

- (a) a complaint were a reference to the reference; and
- (b) the complainant were a reference to the applicant who made the reference; and
- (c) a government agency were a reference to the local government business entity mentioned in the reference; and
- (d) an investigation were a reference to an investigation under this

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part; and

- (e) the responsible Minister, or the Ministers, were a reference to the relevant local government.

***‘Division 3—Reports of Queensland Competition Authority about references***

**‘Giving of reports**

**‘458PG.(1)** If the Queensland Competition Authority gives an investigation notice to anyone, it must give a report on its consideration of a reference about an activity of a local government business entity to—

- (a) the local government; and  
(b) if the entity is a corporatised corporation—the corporation.

**‘(2)** The authority also must give to other persons to whom the authority has given an investigation notice the following—

- (a) written notice of the giving of the report;  
(b) a copy of the recommendations in the report;  
(c) written notice that the report (including recommendations) is open to inspection at the local government’s public office.

**‘Contents of reports**

**‘458PH.** The Queensland Competition Authority must, in a report—

- (a) if the reference alleges the complaint process for an activity of the local government business entity is not appropriate—comment on the appropriateness of the process; and  
(b) state whether it considers any relevant allegation has been substantiated; and  
(c) if the authority considers the reference has been substantiated—include its recommendations on how the local government business entity’s failure to carry on an activity in a way that complies with the competitive neutrality principles

applying to the activities could be overcome; and

- (d) if the authority considers the local government business entity suffers a competitive disadvantage because of the local government ownership of the entity—
  - (i) include comments about the competitive disadvantage (including comments about the effect of the disadvantage on the local government business entity); and
  - (ii) include recommendations on how the disadvantage suffered by the local government business entity could be overcome; and
- (e) state its reasons for its recommendations.

### **‘Reports open to inspection**

**‘458PI.(1)** As soon as practicable after the local government receives the report, the local government must ensure a copy of it is open to inspection.

**‘(2)** For section 8,<sup>14</sup> the report is a document of the local government.

### **‘Local government decisions about reports**

**‘458PJ.(1)** The local government must decide, by resolution, whether to implement the recommendations in the report.

**‘(2)** The resolution must include reasons for the decision.

**‘(3)** The local government must make the resolution—

- (a) within 1 month after the local government receives the report from the Queensland Competition Authority on a reference; and
- (b) if the local government does not meet within the month—at the first meeting of the local government after the month.

**‘(4)** Within 7 days after making a decision, the local government must give written notice of the resolution to—

- (a) the applicant; and

<sup>14</sup> Section 8 (Meaning of “open to inspection”)

- (b) if the local government business entity concerned is a corporatised corporation—the corporation; and
- (c) the Queensland Competition Authority.

‘(5) If the decision is to implement the recommendations and the local government business entity concerned is a corporatised corporation, the corporation must implement the recommendations as soon as practicable.

## **‘PART 4—ACCREDITATION**

### **‘Application of pt 4**

‘458Q. This part applies to—

- (a) a significant business activity, under chapter 7A, carried on by a local government business entity; and
- (b) a business activity, or roads business activity, under chapter 7B.

### **‘Purpose of accreditation**

‘458QA. The purpose of accreditation under this part is to remove doubt for a local government business entity carrying on an activity about whether it carries on the activity in accordance with the relevant principles of competitive neutrality.

### **‘Application for accreditation**

‘458QB.(1) A local government business entity carrying on an activity may apply to the Queensland Competition Authority for an accreditation of the activity for the entity.

‘(2) An application must be made in the form approved by the authority.

‘(3) The authority may investigate an application to decide whether to accredit the applicant.

### **‘Investigation notice**

**‘458QC.(1)** Before starting an investigation under this part, the Queensland Competition Authority must give reasonable notice of the investigation to—

- (a) the applicant; and
- (b) if the applicant is a corporatised corporation—the local government: and
- (c) any other person the authority considers appropriate.

**‘(2)** The notice must—

- (a) state the authority’s intention to conduct the investigation; and
- (b) invite the person to whom the notice is given to make written, or, if the authority approves, oral, submissions to the authority within a reasonable time stated in the notice; and
- (c) state the authority’s address.

### **‘Matters to be considered by authority for investigation**

**‘458QD.(1)** In conducting an investigation under this part, the Queensland Competition Authority must have regard to the following matters—

- (a) the need to ensure compliance with the relevant competitive neutrality principles;
- (b) the need for efficient resource allocation;
- (c) the need to promote competition;
- (d) any local government policies affecting the application of competitive neutrality principles, including—
  - (i) any directions about the application of competitive neutrality principles given to the local government business entity by the local government; and
  - (ii) any arrangements between the local government and the local government business entity about a competitive advantage gained or competitive disadvantage suffered by

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- the entity because of the local government ownership of the entity; and
- (iii) social welfare and equity considerations including community service obligations and the availability of goods and services to consumers; and
  - (iv) policies on economic and regional development issues, including employment and investment growth;
- (e) any law or local government policies relating to ecologically sustainable development;
  - (f) any law or local government policies relating to occupational health and safety or industrial relations.

‘(2) In conducting an investigation, the authority may also have regard to the interests of consumers or any class of consumers.

‘(3) However, in deciding whether an activity carried on by the local government business entity be accredited, the authority must not accept that any competitive advantage enjoyed by the entity solely because of local government ownership of the entity is justified because of the existence of a competitive disadvantage suffered by the entity because of the local government ownership of the entity.

‘(4) Subsections (1) and (2) do not limit the matters the authority may have regard to in conducting an investigation.

### **‘Procedures for investigations**

‘458QE.(1) The following provisions of the *Queensland Competition Authority Act 1997* (the “**provisions**”) apply, with all necessary changes and the changes prescribed in subsection (2), to an investigation under this part—

- part 6 (Investigations by authority)
- part 9 (Offences)
- section 236 (Responsibility for acts or omissions of representatives)
- section 237 (Protection from liability of member or employee)

- section 238 (Protection from liability of person giving information to authority)
- section 239 (Confidential information)
- section 240 (Secrecy)
- section 241 (Draft reports)
- section 243 (Delegation).

‘(2) Unless a contrary intention appears, the provisions apply as if a reference in the provisions to—

- (a) a government agency were a reference to the local government business entity mentioned in the application; and
- (b) an investigation were a reference to an investigation under this part; and
- (c) the responsible Minister or the Ministers were a reference to the relevant local government.

### ‘Decision on application

‘458QF.(1) The Queensland Competition Authority must consider an application for accreditation received by it and either grant, or refuse to grant, the accreditation.

‘(2) In considering an application, the authority must have regard to the relevant competitive neutrality principles applying to the activity and—

- (a) if the authority is satisfied the applicant carries on the activity in accord with the principles—the authority must grant the accreditation; or
- (b) if the authority is not satisfied the applicant carries on the activity in accord with the principles—the authority must refuse to grant the accreditation.

‘(3) Also, the authority may refuse to grant the accreditation if—

- (a) under an investigation notice the authority has sought further information about the application; and
- (b) the applicant has failed, without reasonable excuse, to give the

information to the authority within the time stated in the relevant notice.

### **‘Conditions on grant of accreditation**

**‘458QG.(1)** If the Queensland Competition Authority decides to grant an accreditation, the grant is subject to the following conditions—

- (a) a condition that the local government business entity must continue to comply with the relevant competitive neutrality principles;
- (b) a condition that the local government business entity must inform the authority of any change in the entity’s structure or operations that may affect the entity’s continued compliance with the relevant competitive neutrality principles.

**‘(2)** The authority may impose any other conditions it considers are necessary and reasonable for ensuring compliance with the accreditation.

**‘(3)** Without limiting subsection (2), a condition may relate to requirements of the local government business entity to give relevant information to the authority that is necessary and reasonable to enable the authority to decide whether it is appropriate to maintain the accreditation.

**‘(4)** For a condition mentioned in subsection (3), the information may be required to be given to the authority either—

- (a) from time to time, at reasonable intervals; or
- (b) at stated reasonable times.

### **‘Notice of decision**

**‘458QH.(1)** If the Queensland Competition Authority decides to grant an accreditation, the authority must give a written notice to—

- (a) the applicant; and
- (b) if the applicant is a corporatised corporation—the local government.

**‘(2)** The notice must state—



- (a) the decision; and
- (b) the period of accreditation (not longer than 2 years); and
- (c) the conditions of the accreditation; and
- (d) for a condition imposed by the authority—the reasons for the condition.

‘(3) If the authority decides not to grant the accreditation, the authority must give the applicant a written notice stating the decision and the reasons for the decision.

#### **‘Publication of decision**

‘458QL. If the Queensland Competition Authority decides to grant an accreditation, the authority must publish in the gazette a notice of the grant.

#### **‘Period of effect of accreditation**

‘458QJ.(1) An accreditation remains in force until the end of the period stated in the authority’s accreditation notice, unless it is sooner surrendered or cancelled.

‘(2) In this section—

“**authority’s accreditation notice**” means a notice given to an applicant for an accreditation by the Queensland Competition Authority advising the applicant of the grant of the accreditation.

#### **‘Surrender of accreditation**

‘458QK.(1) A local government business entity that has been granted an accreditation may surrender the accreditation by written notice given to the Queensland Competition Authority.

‘(2) The surrender takes effect—

- (a) the day the notice is given to the authority; or
- (b) if a later day of effect is stated in the notice—the later day.

### **‘Cancellation of accreditation**

**‘458QL.(1)** An accreditation may be cancelled on the ground the local government business entity concerned has contravened a condition of the accreditation.

**‘(2)** If the Queensland Competition Authority believes the ground exists to cancel an accreditation, the authority must give the local government business entity a written notice that—

- (a) states the authority proposes to cancel the accreditation; and
- (b) states the grounds for the proposed action; and
- (c) outlines the facts and circumstances forming the basis for the grounds; and
- (d) invites the entity to show, in writing, within the show cause period why the proposed action should not be taken.

**‘(3)** If, after considering all written representations made within the show cause period, the authority still believes the grounds exist to cancel the accreditation, the authority may cancel the accreditation.

**‘(4)** The authority must give a written notice stating its decision and the reasons for the decision to—

- (a) the local government; and
- (b) if the entity is a corporatised corporation—the corporation.

**‘(5)** The decision takes effect—

- (a) the day the notice is given to the local government business entity;  
or
- (b) if a later day of effect is stated in the notice—the later day.

**‘(6)** In this section—

**“show cause period”**, for a notice given to a local government business entity under subsection (2), means the period ending not less than 14 days, and not more than 21 days, after the notice is given to the entity.

### **‘Lists of accreditations**

**‘458QM.** The Queensland Competition Authority must keep a list of all current accreditations granted under this part available for inspection by any person.

## **‘PART 5—MISCELLANEOUS**

### **‘Register of accreditations, complaints etc.**

**‘458R.** A local government must keep open to inspection a register of activities carried on by local government business entities to which competitive neutrality principles apply containing the following particulars—

- (a) activities under chapter 7A, parts 4, 5 or 6 to which the local government has applied competitive neutrality principles and the date from which the competitive neutrality principles apply;
- (b) activities to which the code of competitive conduct currently applies under chapter 7B and the date on which the code first applied to each activity;
- (c) activities currently accredited under part 4;
- (d) activities for which the Queensland Competition Authority is the referee for the complaint process for the entity carrying on the activity;
- (e) a list of—
  - (i) current investigation notices for complaints and references received; and
  - (ii) the local government’s decisions on—
    - (A) the referee’s recommendations on the complaints; and
    - (B) the Queensland Competition Authority’s recommendations on references of complaints.

**‘Annual report to include summary of complaints and decisions by local government**

**‘458RA.** The local government must include in its annual report<sup>15</sup> for each financial year—

- (a) a summary of—
  - (i) investigation notices for complaints and references received by the local government in the year; and
  - (ii) the local government’s decisions in the year on—
    - (A) the referee’s recommendations on the complaints; and
    - (B) the Queensland Competition Authority’s recommendations on the references; and
- (b) a list of all activities of its local government business entities currently accredited under part 4.’.

**Amendment of s 697 (Local laws about dogs)**

**12.** Section 697(5)—

*omit.*

**PART 4—AMENDMENT OF LOCAL GOVERNMENT  
(ABORIGINAL LANDS) ACT 1978**

**Act amended**

**13.** This part amends the *Local Government (Aboriginal Lands) Act 1978*.

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<sup>15</sup> Under section 447, a local government is required to prepare an annual report. Also under the *City of Brisbane Act 1924*, section 119, the Brisbane City Council is required to prepare an annual report.

### **Amendment of s 109 (Expiry of part)**

**14.** Section 109, from ‘2 years’—

*omit, insert—*

‘on 30 June 1999’.

## **PART 5—AMENDMENT OF LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT 1990**

### **Act amended in pt 5**

**15.** This part amends the *Local Government (Planning and Environment) Act 1990*.

### **Insertion of new s 8.12**

**16.** After section 8.11—

*insert—*

### **‘Special provisions relating to Danpork Australia Pty Ltd**

**‘8.12.(1)** The rezoning approval given by the Warwick Shire Council on 22 August 1995 to Danpork Australia Pty Ltd (A.C.N. 052 815 924) is amended by omitting condition 13A and inserting the following condition—

13A. The applicant be required to construct, or cause to be constructed, a weir of not more than 315 ML capacity on the Condamine River at a location and of a design to the satisfaction of the State.

**‘(2)** In a proceeding about the condition inserted by subsection (1), a court must not decide the condition is void for uncertainty.’.

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## SCHEDULE

### MINOR AMENDMENTS OF LOCAL GOVERNMENT ACT 1993

section 9

**1. Section 450—**

*insert—*

‘(m) particulars required to be included under section 458RA.’.

**2. Section 458CA(1)(b)—**

*omit, insert—*

‘(b) cost of funds advantage the local government obtains over commercial rates of interest because of State guarantees used for providing the goods or services.’.

**3. Section 458CH(2)(a)(ii)—**

*omit, insert—*

‘(ii) cost of funds advantage the local government obtains over commercial rates of interest because of State guarantees used for providing the goods or services; and’.

**4. Section 458FL, heading, ‘Subdivision’—**

*omit, insert—*

‘Division’.

## SCHEDULE (continued)

**5. Section 458FL(1) and (2), ‘subdivision’—***omit, insert—**‘division’.***6. Section 459LE—***renumber as section 458LE.*